times. The assumption of a right to estop is as great a step as any. Once take the jurisdiction to do that, and there is no ground for refusing to go on. On the strict principle of international law it would seem that in an action *in personam* by or against a foreign sovereign, a court act as arbitrators, without power to enforce his obedience; for even after judgment his extra-territoriality should not be violated by a friendly State. In an action *in rem*, on the other hand, jurisdiction, once obtained over the *rem*, might well subsist. See *The Charkieh* (cited *supra*); *United States* v. *Wilder*, 3 Sumner, 308.

BREACH OF PROMISE. — Such cases as *Mighell* v. *The Sultan of Johore*, *Van Houten* v. *Morse* (Mass. S. J. C. 1893), *Delia Keegan* v. *Russell Sage*, and *Zella Nicolaus* v. *George Gould* (N. Y.), and the evidence which they furnish of many other such cases settled out of court, do not show much justification for the action for breach of promise. Anomalous, practically an action of tort with heavy punitive damages claimed and often given, and used sometimes as a method of blackmail, sometimes as a means of expressing the indignation of all good jurymen against faithless swains, it forces the courts into a commercial view of what cannot properly be regarded as a matter of trade or dicker. It brings feelings not properly the subject of judicial investigation into undue publicity, and serves seldom as a real remedy for breach of legal obligation. Some years ago Lord (then Sir Farrer) Herschell proposed in the House of Commons, and Sir Henry James seconded, a resolution that "The action for breach of promise of marriage ought to be abolished, except in cases where actual pecuniary loss has been incurred by reason of the promise, the damages being limited to such loss." Here, in the United States, where a remedy and a punishment for seduction are generally provided, it would be interesting to have some one State at least adopt the spirit of this resolution. The similarity to other mutual agreements originally led the courts into allowing the action. As a fresh matter to-day it might well be doubted whether the commercial spirit is sufficiently apparent in the exchange of promises to show an intention of creating a contract in the sense in which contracts are enforced by the courts. The action seems peculiar to the common law.

If it is not to be abolished, at least the proof of the promise should be regulated. There is a serious lack of consistency in requiring written proof of a contract of sale of goods worth fifty dollars or so, and allowing a woman to recover forty thousand dollars or more on her own parol testimony, strenuously denied by the man. Yet such is the law.

MEANING OF "HIGH SEAS." — The Supreme Court, in *United States* v. *Rodgers*, has recently decided that the description, "high seas," in section 5346 of the Revised Statutes, gives jurisdiction to the Federal courts over the Great Lakes. The decision is based on the general use of the term in international law, and so has a wider interest than a mere interpretation of a statute. Justices Brown and Gray dissented, taking the position that "high seas" means only such waters as are open as of right to the commerce of the world.

In England the phrase "high seas" was used as practically co-extensive with the admiralty jurisdiction. But the fact that the Great Lakes are within the admiralty jurisdiction of the United States is not vital in

this case. This statute is to be construed as originally enacted in 1790. But down to 1851 it was not supposed that the Great Lakes were a part of the admiralty jurisdiction. The *Genesee Case*, 12 How. 453, in that year, finally settled that the Great Lakes were so included. The decision, then, can be reduced to the assertion that in 1790 a definition of these words would have covered the lakes, even though at that time they were not supposed to be within the grant of admiralty jurisdiction.

The Constitution gives Congress power to define and punish piracies and felonies committed on the high seas. Under this clause, could the United States undertake to punish a piracy committed on the Canadian half of Lake Superior? If it is a "high sea," such would seem to be the conclusion. Again, may European nations claim, on the established principles of international law, the right to maintain a fleet on Lake Michigan? Of course, such consequences are not to be seriously contemplated. The suggestion serves, however, to bring out the point that in the opinion of the court the term "high seas" has reference rather to the magnitude and commercial importance of the waters than to the rights of the nations of the world over them. Lake Michigan, though entirely within the territorial limits of the United States, and exclusively under its control, is nevertheless a "high sea" so far as this statute is concerned.

RECENT CASES.

ADMIRALTY — MARITIME LIEN — PROCEEDINGS IN REM IN STATE COURTS. — Hill's Code, § 3690, so far as it authorizes a proceeding *in rem* in the State courts to enforce a lien for necessary supplies furnished a vessel in her home port, is invalid, as it contravenes the Constitution of the United States, art. 3, § 2, and the Revised Statutes of the United States, §§ 563, 711, which give exclusive jurisdiction of such proceedings to the district courts of the United States. *Portland Butchering Co.* v. *The Willapa*, 34 Pac. 689 (Or.).

For a similar decision on this point see 7 HARVARD LAW REVIEW, p. 119.

AGENCY — EMPLOYER'S LIABILITY — RISK OF THE EMPLOYMENT. — The plaintiff, who was employed by the defendant as a blacksmith, was suddenly called from his work by one of the foremen of another department to assist in hoisting a heavy smokestack which was in position ready to be raised. The tackle being improperly adjusted, the stack fell and injured the plaintiff. *Held*, that the question was properly submitted to the jury to determine whether "the hoisting required peculiar skill or knowledge to perform it with safety;" the material point being whether the plaintiff under all the circumstances had sufficient experience to understand the hazards of the extra work which he was required to perform. *Coal Co.* v. *Hannie*, 35 N. E. Rep. 162.

For a discussion of the application of the maxim "Volenti non fit injuria," on which this case turns, see Beven on Neg. (1st ed.) p. 329 *et seq.* See also 14 Am. and Eng. Encyc. of Law (1st ed.), p. 861. About all that can be said about the doctrine and its application will be found in the opinion of the Law Lords in *Smith* v. *Baker* [1891], App. Cas. 325.

BILLS AND NOTES — ANOMALOUS INDORSER — JOINT MAKER. — *Held*, that a person who indorses a note before its delivery to the payee is presumed to assume the obligation of a joint maker, and that evidence of a contrary intention is not admissible as against an innocent transferee for value. *Salisbury* v. *First National Bank*, 56 N. W. Rep. 727 (Neb.).

The position of an anomalous indorser is in this case for the first time decided in Nebraska. There seem to be at least three distinct lines of decisions on this point. One class, including the majority of jurisdictions, holds, as in this case, that the obligation of the indorser is presumably that of a joint maker. This view is sustained by the following cases: 95 U. S. 90; 9 Ohio, 139; 99 Mass. 179; 35 N. J. Law, 517.